

Extract from the Principles of European Insurance Contract Law (PEICL)

Article 2:101

Duty of Disclosure

- (1) When concluding the contract, the applicant shall inform the insurer of circumstances of which he is or ought to be aware, and which are the subject of clear and precise questions put to him by the insurer.
- (2) The circumstances referred to in para. 1 include those of which the person to be insured was or should have been aware.

Article 2:102

Breach

- (1) When the policyholder is in breach of Article 2:101, subject to paras. 2 to 5, the insurer shall be *entitled to propose a reasonable variation* of the contract or to terminate the contract. To this end the insurer shall give written notice of its intention, accompanied by information on the legal consequences of its decision, within one month after the breach of Article 2:101 becomes known or apparent to it.
- (2) If the insurer proposes a reasonable variation, the contract shall continue on the basis of the variation proposed, unless the policyholder rejects the proposal within one month of receipt of the notice referred to in para. 1. In that case, the insurer shall be entitled to terminate the contract within one month of receipt of written notice of the policyholder's rejection.
- (3) The insurer shall *not be entitled to terminate the contract if the policyholder is in innocent breach* of Article 2:101, unless the insurer proves that it would not have concluded the contract, had it known the information concerned.
- (4) Termination of the contract shall take effect one month after the written notice referred to in para. 1 has been received by the policyholder. Variation shall take effect in accordance with the agreement of the parties.

(5) If an insured event is caused by an element of the risk, which is the subject of negligent non-disclosure or misrepresentation by the policyholder, and occurs before termination or variation takes effect, no insurance money shall be payable if the insurer would not have concluded the contract had it known the information concerned. If, however, the insurer would have *concluded the contract at a higher premium or on different terms, the insurance money shall be payable proportionately or in accordance with* such terms.

Art 4:101:

“A precautionary measure means a clause in the insurance contract, whether or not described as a condition precedent to the liability of the insurer, requiring the policyholder or the insured, before the insured event occurs, to perform or not to perform certain acts.”

Art 4:102 ‘Insurer’s Right to Terminate the Contract’

(1) A clause which provides that in the event of non-compliance with a precautionary measure the insurer shall be entitled to terminate the contract, shall be *without effect* unless the policyholder or the insured has breached his obligation with *intent* to cause the loss or *recklessly* and with knowledge that the loss would probably result.

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Art 4:103:

(1) A clause that non-compliance with a precautionary measure totally or partially exempts the insurer from liability, shall only have effect to the extent that the loss was *caused* by the non-compliance of the policyholder or insured with intent to cause the loss or recklessly and with knowledge that the loss would probably result.

(2) Subject to a clear clause providing for reduction of the insurance money according to the degree of fault, the policyholder or insured, as the case may be, shall be entitled to insurance money in respect of any loss caused by *negligent* non-compliance with a precautionary measure.